

SENTENCING COMMISSION

MINUTES

Committee:	SENTENCING COMMISSION MEETING
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Date:	Wednesday, Nov. 2, 2005	Time:	12:00pm-2:00pm	Place:	State Capitol Complex East Wing, Beehive Room
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Members Present	Sheriff Phil Barney, Senator Gregory Bell, Don Blanchard, Paul Boyden, Judge Jeffrey Burbank, Scott Carver, Michele Christiansen, Judge Terry Christiansen, K.S. Cornaby, Scott Daniels, Marlene Gonzalez, John Hill, Lauren Hilton for Kathy Reimherr, Judge Kimberly Hornak, Randy Kester, Jim Marchel, Judge Paul Maughan, Brian Namba, Judge Gregory K.Orme, Kathy Peterson
Members Excused	Rep. Duane Bourdeaux, Senator Mike Dmitrich, Rep. Eric Hutchings, Dan Maldonado, Chief Ed Rhoades, Sy Snarr, Kirk Torgenson
Staff	Julie Christenson, Mike Haddon, Jo Lynn Kruse, Tom Patterson, Ned Searle

Visitors	Matt Bates, Cliff Butter, Derek Byrne, Chris Mitchell, Chad Platt, Jacey Skinner
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Agenda Item:	Welcome and Approval of Minutes
Notes:	Kay Cornaby called the meeting to order and welcomed everyone. Judge Burbank made the motion to accept the October minutes. Judge Christiansen seconded the motion and it was approved unanimously .

Agenda Item:	Follow Up – Prohibition of Expungement, Sentence Reductions Pending Unpaid Restitution
Notes:	<p>The following changes to the draft legislation are:</p> <ol style="list-style-type: none"> 1. All provisions relating to the juvenile court have been deleted. The juvenile courts already have a rule prohibiting an expungement if there is outstanding restitution to be paid. 2. Board of Pardon orders for restitution as part of the language under (h), page 3 of the draft has been included. 3. Language concerning a defendant's inability to pay has not been incorporated. If the defendant is in dire financial circumstances then the responsibility should rest on him to address it to the court as to whether the court ordered restitution should be waived or amended enabling the defendant then to get an expungement or a reduction in sentence.

Agenda Item:	Child Rape Statute and Application – Assistant Attorney General Matthew Bates
Notes:	<p>Judge Orme is excused at this point as he is involved in this case. There is a case before the court of appeals, out of Weber County. A 13 year old girl and a 12 year old boy who had voluntary sexual intercourse and the girl became pregnant. The doctor reported it to authorities and the county brought a delinquency petition alleging she had committed sexual abuse of a child, a second degree felony if the victim is under the age of 14. The girl pled guilty and appealed this up to the court of appeals. What she has asserted to the court of appeals is that her rights to equal protection of the laws have been violated because she is being treated more harshly than someone who is 14 or 15 years old who has intercourse with somebody their same age.</p> <p>Voluntary sex with a thirteen year-old is a first degree felony (rape of a child, U.C.A. §76-5-402.1), whereas voluntary sex between children ages fourteen to seventeen is only a class B misdemeanor (unlawful sexual activity with a minor, U.C.A. §76-5-401). The juvenile court denied her motion because (1) the sexual abuse of a child statute treats all offenders the same by conditioning the level of the offense on the age of the victim, not on the age of the perpetrator, and (2) the statute unambiguously applies to people under the age of fourteen. The following disposition was given by the juvenile court. While this is a serious 2nd degree felony charge, she was ordered by the court to write an essay about what she had done and the effects it has on her and her baby. The court asked her to obey the request from the parents to not have unsupervised contact with the boy and put her under the supervision of DCFS. Michele Christiansen made the motion to have the juvenile subcommittee address the issue. Brian Namba seconded the motion and it passed unanimously. The Juvenile Subcommittee will reconvene to address this issue along with other juvenile issues.</p>

Agenda Item:	Proposed Recommendations to Legislative Interim Committee/Penalty Enhancements – Anomalies Committee
Notes:	<p>Susan Allred compiled a summary for the Law Enforcement Interim Committee at the request of Representative Harper. Rep. Harper is looking into the issue of enhancements to see whether enhancements in our system are fair or whether they need to be adjusted or totally done away with. The Interim Committee sent a letter to the Sentencing Commission a few months ago, asking the Commission to look at these specific enhancements. (see handout) The Sentencing Commission has designated the Anomalies Committee to address this. The Anomalies Committee along with Rep. Harper determined that the repeat offenses and the offenses that result in greater violence or injury were not so much a concern to Rep. Harper. He felt those enhancements were justified. He rather wanted the group to focus and identify others, such as enhancements based on the victim. (see yellow handout)</p> <p>Drug Free Zones – There is presently an enhancement that comes as the result of being found guilty of possession/distribution/manufacturing of a controlled substance within a 1000 foot zone of a school, park, church, or other specified public areas. The lengthy list of other</p>

specified areas (shopping malls, sports stadiums/arenas theaters, movie houses play houses, and parking lots that are adjacent to them, a public parking lot or structure) makes it hard to identify any area along the Wasatch Front and other urban areas that is **not** a drug free zone.

The Board of Pardons brought up this issue to the interim committee. Mike Sibbett wrote a letter regarding this subject and one point he made was the issue of entrapment, where police would make an arranged buy specifically within a drug free zone or by design, pull over a vehicle in a drug free zone for the purpose of gaining an enhanced penalty. This is a concern where you are looking at a full step up in penalty. If you were found guilty of a 2nd degree (one to fifteen years) felony, it would then bump up to a 1st degree felony (five to life). Discussion ensued on whether or not to decrease the zone, perhaps to a 100 foot zone or a 100 yard zone. There is concern about this statute not being applied evenly across the state. Plea and abeyance was also discussed. Some said it made sense not to measure in feet, but to judge on the illegal activity. Don Blanchard made the **motion** to adopt the 100 foot limit as a compromise or solution. Scott Daniels **seconded** the motion. Senator Bell then made a **sub motion** that we recommend to the interim committee that we are uncomfortable with the 1000 foot limitation, that it goes too far and is too vague and is applied disproportionately throughout the state. We recommend that they look at schools in particular and have a more nuanced approach with an articulated prioritization given to certain areas. Judge Orme **seconded** the sub motion. Paul Boyden made an **amendment of the sub motion** that the word immediate at the bottom of page 3 in Attachment A be stricken so that it simply says presence rather than immediate presence. Senator Bell **seconded** and it passed unanimously. Discussion then turned to the word “presence” and that “presence” should be better defined. DCFS has a definition that we might want to study. Paul Boyden then **motioned** that it might be better to give the Interim Committee the basic concept as Senator Bell has described and have them get a basic consensus and send back to us in the form of another draft, and proceed in stages. Brian Namba **seconded** the motion and it **passed unanimously**.

Penalty for Hate Crimes - The problem with this statute is that it is not actually a “hate crimes” statute but is a civil rights statute. The Commission will make a proposal to change the name from hate crime statute to civil rights statute. The enhancement increases the penalty from (in most cases) a Class B misdemeanor to a third degree felony. Enhancement will go from a Class B misdemeanor to a Class A. The division of the intent requirement makes the statute confusing to the jury. The “intent to intimidate” language is less clear than the “fear” language used to define it. It doesn’t make sense to have four different criminal intent elements for the same thing. The listing of predicate offenses is not necessary, nor reflective of all criminal acts which may be used to interfere with civil rights. Why limit it to any particular crime? And finally, lines 18 through 32 contain procedural language which is no longer needed. Case law requires all enhancement language to be pled in the charging document called a “criminal information” and proved to the jury beyond a reasonable doubt. This is not applicable anymore. We don’t want to change the definition of a civil right. This is merely a re-write of the existing hate crime statute. We’re calling it civil rights and streamlining it. Judge Daniels would like to add conduct which was done in retaliation for

exercising a civil right, later, after the right has been exercised. We will make a report to the Interim Committee on this next Wednesday at 1:30pm, room 20. Senator Bell made the **motion** that we recommend to the Interim Committee that we draft the 76-3-203.3 and clarify that the Court of Appeals in the state of Utah found that this is not a hate crimes statute and that it is a civil rights violation statute and should be drafted as set forth in attachment B. Judge Orme **seconded** the motion and it **passed unanimously**.

Items 4 & 5 (assault against school employees and assault against peace officer) no recommendations. Items 6 & 7 (assault on a correctional officer & assault against health care provider and emergency medical service worker) no recommendations. Item 13 (offenses committed against timber, mining, or agricultural industries – enhanced penalties). It is recommended that this be repealed. Item 14 (offenses committed against animal enterprises – definitions- enhanced penalties) the committee likewise recommends that this be repealed. Senator Bell made the **motion** to adopt the recommendations of the Anomalies Committee and present to the Interim Committee for consideration. Judge Christiansen **seconded** and it **passed unanimously**. Item 16 (release of fur-bearing animals) the committee felt was justified. Judge Orme made the **motion** to do just as the Anomalies Subcommittee recommends on 13, 14 and 16. Randy Kester **seconded** the motion and it passed unanimously. Item #3 on the brown paper 76-8-316 (influencing, impeding, or retaliating against a judge, prosecutor or member of the Board of Pardons and Parole) the Anomalies Committee concludes this enhancement is justified for public policy purposes. Offenses such as these jeopardize not only the individual but also the society as a whole and is an assault on the system. The Committee also recommends an amendment to include prosecutors. Senator Bell made the **motion** to approve. Judge Orme **seconded** and it **passed unanimously**. Item #4 on the brown paper, 76-8-309, Escape and aggravated escape – Consecutive sentences – Definitions. The Anomalies Committee recommended that this be amended to reflect the same penalty (2nd degree felony) for escape from jail as from prison. **Motion** was made by Sheriff Barney to approve the change. Don Blanchard **seconded** the motion and it **passed unanimously**.

The next meeting is scheduled for Wednesday, January 4, 2006, East Office Bldg. Beehive Room
Minutes prepared by Jo Lynn Kruse - Executive Secretary, CCJJ